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Mr John Hawkins
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Dear Mr Hawkins

Further to Telstra and Sensis' appearance before the Senate Economics Committee's Inquiry into the *Trade Practices Amendment (Australian Consumer Law) Bill* (No. 2) 2010 (ACL) at the hearing in Melbourne on 29 April 2010, I am pleased to provide the Committee with further information in response to the following issues that were raised during the hearing:

(a) the percentage of sales that Telstra makes through doorknocking;

(b) the telemarketing contract case study raised in Queensland Legal Aid's submission to the Committee;

(c) Telstra's submissions in relation to goods and services that are considered to be "connected" for the purposes of the consumer guarantee provisions, in the situation where there are associated financial arrangements;

(d) the recent action taken by the ACCC in respect of People Telecom;

(e) clarification of Telstra's submissions in relation to correcting mistakes in catalogue pricing; and

(f) clarification of Sensis' submissions.

Our responses are set out below.

a) Sales through doorknocking

In response to Senator Eggleston's question, Telstra makes approximately 3% of our sales per annum of new connections to consumer customers via doorknocking.

b) Telemarketing contract case study

In response to Senator Cameron's comments, we have considered the telemarketing contract complaint outlined on page 3 of the submission from Queensland Legal Aid, and whether the proposed direct sales provisions in the ACL would assist Mr Y and what action Mr Y could take to stop receiving telemarketing calls.

The *Do Not Call Register Act 2006* (Cth) (**DNCR Act**) already provides an effective mechanism for the consumers in Australia to stop receiving unsolicited telemarketing calls, as the DNCR Act makes it illegal, in the absence of consent, for telemarketers in Australia or overseas to contact a number listed on the DNCR register, unless they are exempted (eg certain public interest organisations are exempted).

Accordingly, Mr Y's contact details could be placed on the DNCR register which would have stopped him from receiving telemarketing calls in the first place. If Phone Company Z continued to make telemarketing calls to Mr Y, notwithstanding Mr Y's telephone number being on the DNCR register, Phone Company Z would face sanctions under the DNCR Act.

However, the proposed provisions in the ACL will undoubtedly assist and further protect consumers, particularly people such as Mr Y who live in jurisdictions where state and territory based direct sales regimes do not currently extend to telemarketing activities. Today, Victoria, New South Wales and the ACT are the only jurisdictions where the direct sales laws extend to telemarketing activities and provide consumers with a statutory cooling-off period within which they can cancel a contract made as a result of an unsolicited call without penalty. The new national approach to telemarketing sales in the ACL will ensure that all consumers can benefit from these protections, no matter where they live.

Protections such as a cooling off period on telemarketing calls would also have been of real benefit to Mr Y in respect of the contracts he formed with Phone Company Z, as they would have given Mr Y and his family the opportunity to cancel those contracts within the statutory termination period (which Phone Company Z would have been obligated to inform Mr Y about). His parents could have assisted him to understand the agreements - including the existence of his termination rights - if he was impaired in any way on account of his disability.

Telstra welcomes the introduction of these new direct sales provisions at a national level in the ACL. Our submissions are aimed at fine tuning the provisions to ensure they are practical and simple for businesses to operationalise, whilst at still protecting consumers.

c) Telstra's submission regarding the termination of "connected" goods or services

In response to Senator Bushby's comments, we have considered our submission in relation to goods and services that are considered to be "connected" for the purposes of the consumer guarantee provisions. In particular, we have considered

the financial arrangements that exist to support customers' acquisition of goods as we understand this is the key concern.

As stated in our submission, we are concerned that sections 265 and 270 of the ACL are very broadly drafted and this may result in unintended consequences and cause great uncertainty to suppliers and consumers. Accordingly, we have suggested that goods and services should be considered to be "connected" only where the goods and services:

(i) are acquired from the same supplier; and
(ii) are bundled in a package where all the goods and services must be obtained together (eg where a mobile handset is bundled with a mobile telecommunications service plan or a lap top is bundled with an internet services plan).

Where there is a financing arrangement underlying the consumer's acquisition of the goods and services, this can happen in one of two ways. First, the consumer can arrange his or her own loan or other arrangement independently of the supplier - in these cases, the supplier is usually not even aware of this arrangement. Alternatively, the supplier will sometimes arrange the financing for the consumer via a third party finance company and this becomes part of the supplier's package to the consumer, as the consumer cannot get this financing without also getting the goods and services in question.

In the first scenario, the supplier is not involved in the financing arrangement, so we submit that the goods and services are not "connected" with the financing arrangement. If the consumer does reject the goods and services in question, then the supplier needs to comply with its obligations under the new ACL provisions, but should not need to take any action with respect to the consumer's financing arrangements, given the supplier will likely not even know these financing arrangements existed.

If the consumer gets the goods replaced or repaired by the supplier, then the financing arrangement should not need to change. If the consumer gets a refund from the supplier, then the consumer may wish to pay out its financing arrangement or use this money to obtain other goods and services at his or her discretion.

In the second scenario, the supplier arranges the financing for the consumer via a third party finance company. There are various contractual structures that can enable this transaction. Where this takes place under one contract with the consumer, then we submit the supply of the goods and services is "connected" as the supplier has supplied everything, so our approach would provide the required protection.

However, it may be that the supplier contracts with the consumer for the supply of the services only and there is a separate contract between the financier and the consumer for the financing arrangement and the supply of the goods. We acknowledge that this could enable a supplier to potentially avoid the obligations under the new ACL provisions if the concept of "connected" was limited to those goods and services actually supplied by the supplier.

Accordingly, we submit that the general rule should be that goods and services are only "connected" where the supplier has supplied all the goods and services in a package deal, but that there should be an exception where the supplier has procured the supply of a financing arrangement so that the financing is also "connected" for the purposes of the provisions. This exception should only apply where the supplier has in fact procured the financing for the consumer and is aware of what those financing arrangements are (ie. not simply a referral to a financing company).

It may be worth utilising the provisions of Schedule 1 to the National Consumer Credit Protection Act 2009 ("**National Credit Code**") for this exception, given this legislation already provides an effective mechanism for consumers to have recourse against linked credit providers in these types of scenarios. Under section 135 of the National Credit Code, in certain circumstances a consumer may be entitled to terminate a tied loan credit contract when a contract for the supply of goods or services is rescinded or discharged.

In our view, this approach to sections 265 and 270 of the ACL will not deprive consumers of protection against financiers when they enter into the kind of financial arrangements described in the second scenario. As stated in our submission, we believe that a broader concept of "connection" which can apply in cases where the good and service are supplied by two separate businesses without any action by the supplier to procure the supply of the goods or services by the other business, is not justified and should not be adopted. This would result in uncertainty for business, particularly where the supplier of a good or service is unaware that the consumer has rejected goods or terminated services which are connected with the good or service they supplied.

d) Conduct of People Telecom Limited

People Telecom is a retail provider of telecommunications services and operates in competition to Telstra. People Telecom does not have any form of dealership or similar agreement with Telstra (although it may be a customer of Telstra's Wholesale division).

According to the enforceable undertaking given to the ACCC by People Telecom in February 2010, the ACCC investigated People Telecom's selling practices and in particular, its use of both telemarketing and door-to-door selling agents to contact customers and promote its products and services. We understand that one of the sales methods employed by these agents was to "churn" customers from other telecommunication service providers to People Telecom by making false representations to them to the effect that:

- the agent was calling the customer as or on behalf of their current service provider (such as Telstra or other providers);

- that People Telecom was a subsidiary or agent of that service provider; and

- the customer was required to consent to transferring their services to People Telecom (and that doing so would not disturb their current contractual arrangements).

As noted in the undertakings, such conduct is likely to be a contravention of sections 52 and 53(d) of the *Trade Practices Act 1974* (TPA). The undertakings given by People Telecom include that it will cease such practices, and that it will send a corrective letter to every consumer who had their services transferred after being contacted by an agent of People Telecom, informing them of the infringing conduct and that the customer may terminate their contract with People Telecom if they wish to.

There is ample evidence to suggest that conduct of this kind is not isolated to just People Telecom and its agents, as several other providers in the telecommunications services industry have previously been sanctioned by the ACCC for engaging in the same or similar types of conduct while trying to unfairly churn customers away from rival providers.

In June 2008, the ACCC received undertakings from Gotalk Limited in which Gotalk admitted its telemarketing and door-to-door sales agents had engaged in misleading conduct that was almost identical to that of People Telecom. Further, in November 2008 the ACCC also obtained a declaration that Clarus Telecom Pty Limited had engaged in false and misleading conduct that contravened sections 52, 53(c) and 53(d) of the TPA by using its telemarketers to mislead existing Telstra customers by representing that Clarus's services were affiliated with (or provided on behalf of) Telstra. In both cases, the provider gave undertakings to the ACCC to offer redress to consumers that were affected and to cease all such practices.

This type of conduct is obviously of great concern to Telstra, not only because it can be very detrimental to the individual consumers targeted, but also because it can undermine the efforts of other service providers to build stronger customer service relationships, as these relationships rely on providers having the trust and confidence of consumers.

In our view, the existing provisions in what is currently Part V of the TPA are effective in applying to this type of conduct and will remain so following introduction of the ACL. In addition, the introduction of new financial penalties for conduct that amounts to a contravention of the current section 53 of the TPA especially may also assist in deterring behaviour of this kind.

Given the evidence suggests that such conduct is still occurring however, we would urge the ACCC to remain vigilant in enforcing these provisions against telecommunications service providers who continue to mislead or deceive consumers.

e) Clarification of Telstra's submissions

We would like to take this opportunity to clarify Telstra's submission in relation to rectifying mistakes in catalogue pricing. We submit the current provision is unduly prescriptive and there may be more effective ways to alert consumers about any mistakes in pricing, such as notices displayed in-store.

We discussed the scenario where a consumer drives a long way to visit a Telstra Shop to obtain goods and services advertised in a catalogue and only discovers that the pricing is incorrect once already in-store. In this scenario, Telstra staff will assess the matter on a case by case basis and are able to help the customer as a matter of good customer service by doing things such as honouring the price which was displayed incorrectly or providing other benefits in recognition of the inconvenience that the person has experienced.

f) Clarification of Sensis' submissions

We would like to take this opportunity to clarify Sensis' submission in relation to unauthorised directory entries and advertisements.

Sensis' key submission is that the prohibition should be amended to include the current long-standing exemptions for publications:

- by or under the authority of the Australian Telecommunications Commission (now Telstra); and/or

- by a large proprietary company or subsidiary of such a company or a listed corporation or a subsidiary of such a corporation.

We note that the Regulation Impact Statement clearly recognised that "*legitimate publications that carry out large numbers of advertisements*" should be excluded and the need to minimize and, where possible reduce, business compliance costs.

While the Bill does include an exemption for publications with an audited circulation of 10,000 copies or more *per week*, this exemption does not cover legitimate publications with an *annual* circulation in the many millions, such as the White Pages® and Yellow Pages® directories, other legitimate print and online publications or other large businesses with no corporate affiliation with a large newspaper publisher. This could have significant unintended consequences for Sensis and other large publishers, who will be required to amend their processes to comply with the more prescriptive authorisation requirements set out in the prohibition (particularly given that this will be a *strict liability* criminal offence). However, it will do nothing to tackle the illegitimate or scam organizations that are more likely to engage in this type of scam or "false billing" conduct.

In response to Senator Hurley's question, our customers do not need this additional protection or benefit included in their contracts. Sensis already has effective processes in place to obtain customers' authorisation and to ensure our contracts with customers are valid and enforceable. We are not aware of any customer concerns with those processes. This means that ultimately, these legislative changes will only increase compliance and administration costs for Sensis and its customers with no tangible customer or industry benefits.

Finally, as discussed during the hearing, Sensis submits there are opportunities to clarify and modernise the drafting of the prohibition, in particular by expressly contemplating authorisations obtained electronically or via voice recordings when setting out the requirements for "documents" to be "signed" and "given" to

customers. This will enable publishers to use more efficient processes for dealing with customers, which will ultimately benefit the small business customers who deal with these publishers on a regular basis.

In closing, Telstra and Sensis would be happy to provide further information in relation to the above if it will be useful for the Committee.

(...)

James Shaw
Director, Government Relations
Telstra Corporation Limited